



Substitute Senate Bill No. 1093

Public Act No. 05-256

**AN ACT CONCERNING REVISIONS TO THE DEPARTMENT OF
MENTAL RETARDATION STATUTES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (e) of section 5-259 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(e) Notwithstanding the provisions of subsection (a) of this section, (1) vending stand operators eligible for membership in the state employee's retirement system pursuant to section 5-175a, shall be eligible for coverage under the group hospitalization and medical and surgical insurance plans procured under this section, provided the cost for such operators' insurance coverage shall be paid by the Board of Education and Services for the Blind from vending machine income pursuant to section 10-303, and (2) blind persons employed in workshops established pursuant to section 10-298a, shall be eligible for coverage under the group hospitalization and medical and surgical insurance plans procured under this section, provided the cost for such persons' insurance coverage shall be paid by the Board of Education and Services for the Blind. General workers employed in positions by the Department of Mental Retardation as self-advocates, not to exceed ten employees, shall be eligible for sick leave, in accordance with

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section 5-247, vacation and personal leave, in accordance with section 5-250, and holidays, in accordance with section 5-254.

Sec. 2. Section 17a-248c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The commissioner shall establish at least one local interagency coordinating council in each region of the state. [The] Each council shall consist of [at least four members who are parents of children aged birth to three with disabilities or of children aged three through twelve with disabilities. Each such council shall also include a representative from the medical community, at least three public or private providers of early intervention services, at least one child care provider or representative of child care providers, regional representatives of participating agencies, if appropriate, and a representative of at least one local public school district. The commissioner may waive one or more of the membership composition requirements set forth in this subsection in those regions where such requirements cannot reasonably be met] five or more individuals interested in the welfare of children ages birth to three years with disabilities or developmental delays.

(b) [The] Each local interagency coordinating council established pursuant to subsection (a) of this section shall meet at least four times a year and shall advise and assist the regional birth-to-three managers regarding [:(1) The planning for delivery and assessment of the early intervention services for eligible children and their families, including the transition from early intervention services to services and programs under sections 10-76a to 10-76g, inclusive, and other early childhood programs; (2) the identification of service delivery reforms needed to promote the availability of early intervention services within natural environments; (3) the identification of programs and services available to children who are determined not to be eligible for early intervention services; (4) the coordination of public and private

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agencies; and (5) such other matters] any matter relating to early intervention policies and procedures within the [region] towns served by that council as are brought to its attention by parents, providers, public agencies or others, including the transition from early intervention services to services and programs under sections 10-76a to 10-76g, inclusive, and other early childhood programs.

[(c) The council shall report annually to the regional birth-to-three managers and the state interagency coordinating council on the adequacy of the birth-to-three system to ensure the availability of family-centered, coordinated services and interface with other existing planning bodies that serve like populations.]

[(d)] (c) Council members who are parents of children with disabilities shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties.

Sec. 3. Subsection (c) of section 17a-210a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(c) Upon the vacancy of the director of the ombudsman office by the person serving in such position on July 1, 2004, and whenever thereafter the term of such position expires or there is a vacancy in such position, the Governor shall appoint the director of the ombudsman office from a list of candidates prepared and submitted to the Governor by the Council on Mental Retardation, established by section 17a-270. The Governor shall notify the council of the pending expiration of the term of an incumbent ombudsman not less than ninety days prior to the final day of the ombudsman's term in office. If a vacancy occurs in the position of ombudsman, the Governor shall notify the council immediately of the vacancy. The council shall meet to consider qualified candidates for the position of ombudsman and shall submit a list of not more than five candidates to the Governor

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ranked in order of preference, not more than sixty days after receiving notice from the Governor of the pending expiration of the ombudsman's term or the occurrence of a vacancy. The Governor shall designate, not more than sixty days after receipt of the list of candidates from the council, one candidate from the list for the position of ombudsman. If, after the list is submitted to the Governor by the council, any candidate withdraws from consideration, the Governor shall designate a candidate from those remaining on the list. If the Governor fails to designate a candidate within sixty days of receipt of the list from the council, the council shall refer the candidate with the highest ranking on the list to the General Assembly for confirmation. If the General Assembly is not in session at the time of the Governor's or council's designation of a candidate, the candidate shall serve as the acting ombudsman until the General Assembly meets and confirms the candidate as ombudsman. A candidate serving as acting ombudsman shall be entitled to compensation and have all the powers, duties and privileges of the ombudsman. An ombudsman shall serve a term of four years, not including any time served as acting ombudsman, and may be reappointed by the Governor or shall remain in the position until a successor is [confirmed] appointed pursuant to this subsection. Although an incumbent ombudsman may be reappointed, the Governor shall also consider additional candidates from a list submitted by the council as provided in this section.

Sec. 4. Subsection (a) of section 17a-241 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Commissioner of Mental Retardation shall [, upon the recommendation of the education council of the school district,] appoint a superintendent for [said] the school district. Said superintendent shall operate the school district in accordance with the rules and orders of the commissioner, [and with the policies and

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programs approved by the education council of said district.] The superintendent shall, subject to the approval of the commissioner, make rules for the administration of the school system, provided all such rules are in accordance with regulations established by the State Board of Education.

Sec. 5. Subsection (b) of section 5-270 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2005*):

(b) "Employee" means any employee of an employer, whether or not in the classified service of the employer, except elected or appointed officials other than special deputy sheriffs, board and commission members, disability policy specialists assigned to the Council on Developmental Disabilities, managerial employees and confidential employees.

Sec. 6. Section 5-198 of the general statutes is amended by adding subsection (cc) as follows (*Effective July 1, 2005*):

(NEW) (cc) Disability policy specialists employed by the Council on Developmental Disabilities.

Sec. 7. Subsection (a) of section 17a-248b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The lead agency shall establish a State Interagency Birth-to-Three Coordinating Council and shall provide staff assistance and other resources to the council. The council shall consist of the following members, appointed by the Governor: (1) [Six parents,] Parents, including minority parents, of children with disabilities twelve years of age or younger, with knowledge of, or experience with, programs for children from birth to thirty-six months of age with disabilities, the total number of whom shall equal not less than twenty per cent of the

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total membership of the council, and at least one of whom shall be a parent of a child six years of age or younger, with a disability; (2) two members of the General Assembly at the time of their appointment, one of whom shall be designated by the speaker of the House of Representatives and one of whom shall be designated by the president pro tempore of the Senate; (3) one person involved in the training of personnel who provide early intervention services; (4) one person who is a member of the American Academy of Pediatrics; (5) one person from each of the participating agencies, who shall be designated by the commissioner or executive director of the participating agency and who have authority to engage in policy planning and implementation on behalf of the participating agency; (6) [five approved] public or private providers of early intervention services, the total number of whom shall equal not less than twenty per cent of the total membership of the council; and (7) a representative of a Head Start program or agency. The Governor shall designate the chairperson of the council who shall not be the designee of the lead agency.

Sec. 8. (*Effective from passage*) On or before October 1, 2005, the Department of Mental Retardation and the Office of Protection and Advocacy for Persons with Disabilities shall jointly develop and implement an interagency agreement governing communication and collaboration between said agencies with regard to the investigation of allegations of abuse and neglect of persons being served by said agencies and the provision of protective services to such persons. On or before January 1, 2006, such agreement shall be submitted, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committees of the General Assembly having cognizance of matters relating to human services and public health. Such agreement shall ensure that each office carries out investigative responsibilities and the provision of protective services efficiently and in a manner calculated to protect the best interests of persons with disabilities, and shall include, but not be limited to:

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- (1) A statement of common goals and principles;
- (2) Communication guidelines identifying the individuals within each agency responsible for communicating information pertaining to investigations of abuse and neglect and the provision of protective services;
- (3) Guidelines identifying the responsibilities of each agency with respect to investigations of abuse and neglect and the individuals in each agency who shall carry out such investigative responsibilities;
- (4) Interagency documentation and reporting procedures;
- (5) Operational safeguards and security and confidentiality guidelines, in accordance with applicable federal privacy laws;
- (6) Dispute resolution procedures; and
- (7) Standards for reviewing and evaluating third party investigations.

Sec. 9. Section 17a-210 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) There shall be a Department of Mental Retardation. The Department of Mental Retardation, with the advice of a Council on Mental Retardation, shall be responsible for the planning, development and administration of complete, comprehensive and integrated state-wide services for persons with mental retardation and persons medically diagnosed as having Prader-Willi syndrome. The Department of Mental Retardation shall be under the supervision of a Commissioner of Mental Retardation, who shall be appointed by the Governor in accordance with the provisions of sections 4-5 to 4-8, inclusive. The Council on Mental Retardation may advise the Governor on the appointment. The commissioner shall be a person

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who has background, training, education or experience in administering programs for the care, training, education, treatment and custody of persons with mental retardation. The commissioner shall be responsible, with the advice of the council, for: (1) Planning and developing complete, comprehensive and integrated state-wide services for persons with mental retardation; (2) the implementation and where appropriate the funding of such services; and (3) the coordination of the efforts of the Department of Mental Retardation with those of other state departments and agencies, municipal governments and private agencies concerned with and providing services for persons with mental retardation. The commissioner shall be responsible for the administration and operation of the state training school, state mental retardation regions and all state-operated community-based residential facilities established for the diagnosis, care and training of persons with mental retardation. The commissioner shall be responsible for establishing standards, providing technical assistance and exercising the requisite supervision of all state-supported residential, day and program support services for persons with mental retardation and work activity programs operated pursuant to section 17a-226. The commissioner shall conduct or monitor investigations into allegations of abuse and neglect and file reports as requested by state agencies having statutory responsibility for the conduct and oversight of such investigations. In the event of the death of a person with mental retardation for whom the department has direct or oversight responsibility for medical care, the commissioner shall ensure that a comprehensive and timely review of the events, overall care, quality of life issues and medical care preceding such death is conducted by the department and shall, as requested, provide information and assistance to the Independent Mortality Review Board established by Executive Order No. 25 of Governor John G. Rowland. The commissioner shall report to the board and the board shall review any death: (A) Involving an allegation of abuse or neglect; (B) for which the Office of Chief Medical

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Examiner or local medical examiner has accepted jurisdiction; (C) in which an autopsy was performed; (D) which was sudden and unexpected; or (E) in which the commissioner's review raises questions about the appropriateness of care. The commissioner shall stimulate research by public and private agencies, institutions of higher learning and hospitals, in the interest of the elimination and amelioration of retardation and care and training of persons with mental retardation.

(b) The commissioner shall be responsible for the development of criteria as to the eligibility of any person with mental retardation for residential care in any public or state-supported private institution and, after considering the recommendation of a properly designated diagnostic agency, may assign such person to a public or state-supported private institution. The commissioner may transfer such persons from one such institution to another when necessary and desirable for their welfare, provided such person and such person's parent, conservator, guardian or other legal representative receive written notice of their right to object to such transfer at least ten days prior to the proposed transfer of such person from any such institution or facility. Such prior notice shall not be required when transfers are made between residential units within the training school or a state mental retardation region or when necessary to avoid a serious and immediate threat to the life or physical or mental health of such person or others residing in such institution or facility. The notice required by this subsection shall notify the recipient of his or her right to object to such transfer, except in the case of an emergency transfer as provided in this subsection, and shall include the name, address and telephone number of the Office of Protection and Advocacy for Persons with Disabilities. In the event of an emergency transfer, the notice required by this subsection shall notify the recipient of his or her right to request a hearing in accordance with subsection (c) of this section and shall be given within ten days following the emergency transfer. In the event of an objection to the proposed transfer, the commissioner shall

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conduct a hearing in accordance with subsection (c) of this section and the transfer shall be stayed pending final disposition of the hearing, provided no such hearing shall be required if the commissioner withdraws such proposed transfer.

(c) [The] Any person with mental retardation who is eighteen years of age or older and who resides at any institution or facility operated by the Department of Mental Retardation, or the parent, guardian, conservator or other legal representative of any person with mental retardation who resides at any [institution or facility operated by the Department of Mental Retardation, or any person with mental retardation himself or herself, who is eighteen years of age or older and who resides at any] such institution or facility, may object to any transfer of such person from one institution or facility to another for any reason other than a medical reason or an emergency, or may request such a transfer. In the event of any such objection or request, the commissioner shall conduct a hearing on such proposed transfer, provided no such hearing shall be required if the commissioner withdraws such proposed transfer. In any such transfer hearing, the proponent of a transfer shall have the burden of showing, by clear and convincing evidence, that the proposed transfer is in the best interest of the resident being considered for transfer and that the facility and programs to which transfer is proposed (1) are safe and effectively supervised and monitored, and (2) provide a greater opportunity for personal development than the resident's present setting. Such hearing shall be conducted in accordance with the provisions of chapter 54.

(d) [The] Any person, or the parent, guardian, conservator or other legal representative of [a] such person, [or the person himself or herself,] may request a hearing for any final determination by the department [which] that denies such person eligibility for programs and services of the department. A request for a hearing shall be made in writing to the commissioner. Such hearing shall be conducted in

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accordance with the provisions of chapter 54.

(e) Any person with mental retardation, or the parent, guardian, conservator or other legal representative of such person, may request a hearing to contest the priority assignment made by the department for persons seeking residential placement, residential services or residential support. A request for hearing shall be made, in writing, to the commissioner. Such hearing shall be conducted in accordance with the provisions of chapter 54.

[(e) The] (f) Any person with mental retardation or the parent, guardian, conservator or other legal representative of [a] such person, [or the person himself or herself,] may object to (1) a proposed approval by the department of a program for such person [which] that includes the use of behavior-modifying medications or aversive procedures, or (2) a proposed determination of the department that community placement is inappropriate for such person placed under the direction of the commissioner. The department shall provide written notice of any such proposed approval or determination to the person, or to the parent, guardian, conservator or other legal representative of such person, [or the person himself or herself,] at least ten days prior to making such approval or determination. In the event of an objection to such proposed approval or determination, the commissioner shall conduct a hearing in accordance with the provisions of chapter 54, provided no such hearing shall be required if the commissioner withdraws such proposed approval or determination.

Sec. 10. (NEW) (*Effective July 1, 2005*) In determining the service component of the rates to be paid by the state under sections 17b-244 of the general statutes, as amended by this act, and 17b-246 of the general statutes, as amended by this act, to private facilities and facilities operated by regional education service centers that are licensed to provide residential care pursuant to section 17a-227 of the

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general statutes, but not certified to participate in the Title XIX Medicaid programs as intermediate care facilities for persons with mental retardation, the Commissioner of Mental Retardation shall consider for each facility the actual wage and benefit costs for services and service providers, adjusted for inflation, and said commissioner shall not establish a single fixed amount for wage and benefit costs that is applicable to all such facilities.

Sec. 11. Subsection (a) of section 17b-244 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2005*):

(a) The room and board component of the rates to be paid by the state to private facilities and facilities operated by regional education service centers which are licensed to provide residential care pursuant to section 17a-227, but not certified to participate in the Title XIX Medicaid program as intermediate care facilities for persons with mental retardation, shall be determined annually by the Commissioner of Social Services, except that rates effective April 30, 1989, shall remain in effect through October 31, 1989. Any facility with real property other than land placed in service prior to July 1, 1991, shall, for the fiscal year ending June 30, 1995, receive a rate of return on real property equal to the average of the rates of return applied to real property other than land placed in service for the five years preceding July 1, 1993. For the fiscal year ending June 30, 1996, and any succeeding fiscal year, the rate of return on real property for property items shall be revised every five years. The commissioner shall, upon submission of a request by such facility, allow actual debt service, comprised of principal and interest, on the loan or loans in lieu of property costs allowed pursuant to section 17-313b-5 of the regulations of Connecticut state agencies, whether actual debt service is higher or lower than such allowed property costs, provided such debt service terms and amounts are reasonable in relation to the useful life and the

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base value of the property. In the case of facilities financed through the Connecticut Housing Finance Authority, the commissioner shall allow actual debt service, comprised of principal, interest and a reasonable repair and replacement reserve on the loan or loans in lieu of property costs allowed pursuant to section 17-313b-5 of the regulations of Connecticut state agencies, whether actual debt service is higher or lower than such allowed property costs, provided such debt service terms and amounts are determined by the commissioner at the time the loan is entered into to be reasonable in relation to the useful life and base value of the property. The commissioner may allow fees associated with mortgage refinancing provided such refinancing will result in state reimbursement savings, after comparing costs over the terms of the existing proposed loans. For the fiscal year ending June 30, 1992, the inflation factor used to determine rates shall be one-half of the gross national product percentage increase for the period between the midpoint of the cost year through the midpoint of the rate year. For fiscal year ending June 30, 1993, the inflation factor used to determine rates shall be two-thirds of the gross national product percentage increase from the midpoint of the cost year to the midpoint of the rate year. For the fiscal years ending June 30, 1996, and June 30, 1997, no inflation factor shall be applied in determining rates. The Commissioner of Social Services shall prescribe uniform forms on which such facilities shall report their costs. Such rates shall be determined on the basis of a reasonable payment for necessary services. Any increase in grants, gifts, fund-raising or endowment income used for the payment of operating costs by a private facility in the fiscal year ending June 30, 1992, shall be excluded by the commissioner from the income of the facility in determining the rates to be paid to the facility for the fiscal year ending June 30, 1993, provided any operating costs funded by such increase shall not obligate the state to increase expenditures in subsequent fiscal years. Nothing contained in this section shall authorize a payment by the state to any such facility in excess of the charges made by the facility

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for comparable services to the general public. The service component of the rates to be paid by the state to private facilities and facilities operated by regional education service centers which are licensed to provide residential care pursuant to section 17a-227, but not certified to participate in the Title XIX Medicaid programs as intermediate care facilities for persons with mental retardation, shall be determined annually by the Commissioner of Mental Retardation in accordance with section 10 of this act.

Approved June 30, 2005